

REMARKS

Claims 1-18, 23 and 24 are pending in the present application, with claims 23 and 24 having been added.

The Office Action rejected claims 1, 2 and 4-9 under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 3,731,678 ("Pyzel") in view of U.S. Pat. No. 3,565,068 ("Bickford"). Applicant respectfully traverses this rejection and for at least the reasons set forth herein submits that claims 1, 2 and 4-9 are patentable over the cited references.

Pyzel teaches a respirator device having a nozzle that is "designed to be inserted in the mouth of the user, simply held in place more or less like a cigar or pipe." Col. 4, lines 51-53. Pyzel also teaches that "nature has provided man with a positive, almost automatically applied mechanism in the back of the nose that closes off the airflow through the nose while breathing in and out through the mouth; for example, the breathing action one automatically adopts when swimming." Col. 4, lines 54-59.

Bickford teaches a closed-circuit emergency breathing apparatus. The breathing apparatus includes a source of chemically derived oxygen in the form of an oxygen generator, a flexible oxygen delivery tube, a filter, a carbon dioxide absorber assembly, a nose obstructor and a protective hood completely covering the head of the wearer. Col. 1, lines 67-73. As can be seen in at least Fig. 1 of Bickford, the nose obstructor is attached to the carbon dioxide absorber assembly.

It is respectfully submitted that Pyzel and Bickford do not teach or suggest, alone or in combination, every element recited in independent claims 1 and 7-9. Specifically, Pyzel and Bickford fail to at least teach, or even suggest:

- “a nose plug removably attached to at least one of the chamber and the filtering unit”, as recited in claims 1, 7 and 8; and
- “a nose clip ... when assembled; and the filtering unit, the chamber coupled to the filtering unit, the mouthpiece coupled to the chamber and the outlet coupled to the chamber when disassembled”, as recited in claim 9.

Rather, Pyzel does not include any description or suggestion of a nose plug, as recognized in the outstanding Office Action. Indeed, Pyzel teaches away from using a nose plug when stating “nature has provided man with a positive, almost automatically applied mechanism in the back of the nose that closes off the airflow through the nose while breathing in and out through the mouth”. Col. 4, lines 54-59. The Office Action does, however, rely on Bickford for teaching a nose plug or clip. Applicant recognizes that Bickford describes a nose obstructor, but respectfully submits that this nose obstructor is affixed to the carbon dioxide absorber assembly as shown in Fig. 1 of Bickford. The nose obstructor is not “removably attached to at least one of the chamber and the filtering unit”, as recited in claims 1, 7 and 8. (Emphasis added).

Accordingly, Applicant respectfully submits that independent claims 1 and 7-9 are patentable over Pyzel in view of Bickford.

Claims 2 and 4-6 depend from and further limit claim 1 and, for at least the reasons stated above in connection with claim 1 are patentable over Pyzel in view of Bickford.

The Office Action also rejected claim 3 under 35 U.S.C. 103(a) as unpatentable over Pyzel in view of Bickford and in further view of U.S. Pat. No. 4,709,651 (“Lance”).

Lance teaches a whistle having a clip. Applicant respectfully submits that Lance is nonanalogous art and, therefore, there would have been no motivation for a person having ordinary skill in the art to have combined the teachings of the respective references. In any

event, claim 3 depends from and further limits claim 1 and, for at least the reasons stated above, in connection with claim 1, is patentable over Pyzel in view of Bickford and further in view of Lance.

The Office Action rejected claims 10, 11 and 13-15 under 35 U.S.C. 103(a) as being unpatentable over Pyzel in view of Bickford and further in view of U.S. Pat. No. 5,322,058 ("Pasternack"). Applicant respectfully traverses this rejection and for at least the reasons set forth herein submits that claims 10, 11 and 13-15 are patentable over the cited references.

It is respectfully submitted that Pyzel, Bickford and Pasternack do not teach or suggest, alone or in combination, every element recited in independent claim 10. Specifically, Pyzel, Bickford and Pasternack fail to at least teach, or even suggest:

- "a nose plug removably attached to at least one of the filtering unit and the air source", as recited in claim 10.

Rather, Pasternack, like Pyzel, is devoid of any teaching or suggestion of a nose plug and the nose obstructor of Bickford is not "removably attached to at least one of the filtering unit and the air source", as recited in claim 10. (Emphasis added).

Accordingly, Applicant respectfully submits that independent claim 10 is patentable over Pyzel in view of Bickford and further in view of Pasternack.

Claims 11 and 13-15 depend from and further limit claim 10 and, for at least the reasons stated above in connection with claim 1, are patentable over Pyzel in view of Bickford and further in view of Pasternack.

Further, the Office Action rejected claim 12 under 35 U.S.C. 103(a) as being unpatentable over Pyzel in view of Bickford and Pasternack and further in view of Lance. Applicant respectfully submits that claim 12 depends from and further limits claim 10 and, for at

least the reasons stated above in connection with claim 10 is patentable over Pyzel in view of Bickford and Pasternack and further in view of Lance.

Claims 16-18 were rejected under 35 U.S.C. 103(a) as being unpatentable over Bickford in view of Pasternack. Applicant respectfully traverses this rejection and for at least the reasons set forth herein submits that claims 16-18 are patentable over the cited references.

It is respectfully submitted that Bickford and Pasternack do not teach or suggest, alone or in combination, every element recited in independent claims 16-18. Specifically, Bickford and Pasternack fail to at least teach, or even suggest:

- “a nose plug removably attached to at least one of the filtering unit and the oxygen unit”, as recited in claims 16 and 17; and
- “a nose clip ... when assembled; and the air source, the outlet coupled to the air source, the filtering unit coupled to the outlet, the mouthpiece coupled to the filtering unit and the expandable sac coupled to the filtering unit when disassembled”, as recited in claim 18.

Rather, as asserted herein with respect to independent claim 10, Applicants respectfully submit that Pasternack does not include any description or suggestion of a nose plug and the nose obstructor described in Bickford is affixed to the carbon dioxide absorber assembly as shown in Fig. 1 of Bickford. The nose obstructor is not “removably attached to at least one of the filtering unit and the oxygen unit”, as recited in claims 16 and 17. (Emphasis added).

Accordingly, Applicant respectfully submit that independent claims 16-18 are patentable over Bickford in view of Pasternack.

Applicant has added two new independent claims –claims 23 and 24. Applicants respectfully submit that these claims are also patentable over the references of record. In

particular, none of the references teach or suggest, alone or in combination, a nose plug removably attached to at least one of the chamber and the filtering unit (or to at least one of the chamber and the air source) for covering at least a portion of the mouthpiece when the breathing apparatus is not in use. The nose obstructor of Bickford does not cover at least a portion of the mouthpiece when the breathing apparatus is not in use or assembled.

Entry of this amendment and favorable reconsideration of this application are earnestly solicited. Should the Examiner have any questions or wish to discuss this response, please feel free to contact the undersigned by telephone at (212) 891-3942.

Respectfully submitted,

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